

INDIVIDUAL PRACTICE RULES OF
MAGISTRATE JUDGE GARY R. BROWN

Effective August 1, 2013

100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014
Courtroom 840

Chambers: (631) 712-5700

Fax: (631) 712-5705

Courtroom Deputy Lauren Posillico: (631) 712-5704

Law Clerks: Joseph Lam (odd-numbered cases) / Dina Demosthenous (even-numbered)

I. Administrative Matters

A. Written Communications - ECF

1. The Electronic Communications Filing (“ECF”) system is the primary means of communications with the Court. All documents directed to Magistrate Judge Brown in civil actions MUST be filed electronically, except as stated below or otherwise directed by the Court. Courtesy copies need not be provided to the Court except as noted herein.

2. Attorneys must make an appearance and register to receive ECF notifications prior to filing any letters, motions or other documents. ECF procedures are available on the Eastern District of New York website. Because all orders issued by the Court will be transmitted to counsel only electronically, attorneys are responsible for keeping their ECF registration current with the Clerk=s Office.

B. Telephone Calls

All questions regarding docketing, scheduling, or criminal matters should be directed to Courtroom Deputy Lauren Brienza. Other questions should be directed to the Law Clerks at the main Chambers number.

C. Faxes

Except for settlement statements as described below, faxes are not permitted to be sent to chambers without the prior permission of the Court. In the event permission is granted,

faxes shall not exceed three pages, excluding cover page, unless permission for a greater number of pages is granted.

D. Requests for Adjournments or Extensions of Time

Requests for adjournments and for extensions of time **must** be filed electronically as AMOTIONS.@ All requests for adjournments of a court appearance, absent an emergency, shall be made in writing at least 48 hours prior to the scheduled appearance. Further, all requests for adjournments or extensions of time must state: (1) the original date and proposed new date; (2) the reasons for the adjournment or extension; and (3) whether the application is on consent.

E. Pro Se Litigants

Litigants proceeding *pro se* are exempt from ECF requirements. (Parties represented by counsel, however, must file documents electronically, even in *pro se* cases.) *Pro se* litigants are directed to make any filings via hand delivery or U.S. mail to the designated “Pro Se clerk” in the Clerk’s office, to the attention of the Judge Brown and the appropriate District Judge, *and* by delivering a copy to the attorney for the opposing party. Court orders will be provided to *pro se* litigants by U.S. mail. *Pro se* litigants must keep current contact information on file with the Court, or risk dismissal of claims or other sanctions. All *pro se* litigants and represented parties opposing *pro se* litigants are directed to the relevant Local Civil Rules, including 12.1, 33.2, and 56.2.

II. Discovery and Settlement

ADiscourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser---in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.@

-Abraham Lincoln, Collected Works

Rule 1 of the Federal Rules of Civil Procedure requires that disputes be resolved in a manner that is Ajust, speedy and inexpensive.@ As such, the Court has an obligation to vigorously explore efforts to reduce litigation costs through settlement. *See In re Tobacco Litig.*, 192 F.R.D. 90, 95 (E.D.N.Y. 2000) (describing court=s Aduty to take affirmative action assisting the parties in all

possible settlement options@); *In re BitTorrent*, 2012 WL 1570765 (E.D.N.Y. 2012) (same). The financial and incidental costs, risks, delays, distraction and anguish associated with litigation often makes settlement a preferable choice for litigants. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute and streamline the issues to be litigated. Therefore, counsel and *pro se* parties should be prepared and authorized to discuss settlement at every court appearance.

A. Initial Conference, Scheduling and Confidentiality Orders

1. Initial Conference. Rule 26(f) requires that the parties to meet and confer prior to the Initial Conference, and to prepare a proposed discovery plan. To assist the parties, the Court attaches a ADiscovery Plan Worksheet@ to the Initial Conference Order. The Worksheet must be completed prior to, and presented at, the Initial Conference. The Worksheet provides a final date, set by the Court, for completion of discovery. The parties are encouraged to establish interim deadlines that realistically meet the needs of this specific case, and may also include additional deadlines, if appropriate. The parties should discuss their discovery needs thoroughly and realistically in advance of the Initial Conference so that the Court may adopt a realistic schedule in conjunction with the assigned District Judge=s Rules. Once a Scheduling Order has been entered with the parties= input, the discovery deadlines will be enforced and amended only upon a showing of good cause. The Scheduling Order issued by the Court will set additional dates as appropriate.

Because most civil cases are referred to Magistrate Judge Brown for the purposes of supervision of discovery and exploring potential resolution, discovery will be structured so as to facilitate reasoned consideration of settlement at the earliest possible juncture:

Phase I Discovery consists of the information that parties believe needs to be exchanged before a reasoned settlement discussion can take place. In some cases this may consist of nothing more than initial disclosures; in other cases, more extensive exchanges of information may be required. This phase of discovery should be carefully tailored to avoid expense and delay and with the recognition that parties may have to consider resolution with incomplete information. This phase of discovery will presumptively require no more than 60 days.

Phase II Discovery represents the balance of discovery required to prepare for mediation and/or trial. This phase of discovery will only be undertaken if the parties are unable to reach an agreement at the settlement conference.

The parties are required to determine what Phase I discovery, if any, is required before meaningful, reasoned settlement discussions may be held. Each party must itemize Phase I discovery items on the attached worksheet and submitted at the Initial Conference.

In addition, the parties should reach an agreement relating to whether there will be production of electronically-stored information (AESI@), and if so, the procedures to be used and the form(s) and procedures in and by which such discovery is to be produced. *See* Fed. R. Civ. P. 26(f)(3)(C).

2. Confidentiality Orders. To conserve resources of the Court and the parties, all confidentiality orders shall be in the form set forth in Appendix A hereto, which is based upon a standardized confidentiality order prepared by the Federal Judicial Center. If a party believes that changes to the form order are required due to the circumstances of the case, it may submit to the Court proposed changes to the form using Atrack changes@ or a similar method to identify the proposed changes.

B. Settlement Conference

1. Pre-Conference Exchange of a Demand and an Offer. A settlement conference is more likely to be productive if, before the conference, the parties exchange written settlement proposals. Accordingly, at least fourteen (14) days prior to the settlement conference, plaintiff=s counsel shall submit a written itemization of damages and settlement demand to defendant=s counsel with a brief explanation of why such a settlement is appropriate. No later than seven (7) days prior to the settlement conference, defendant=s counsel shall submit a written offer to plaintiff=s counsel with a brief explanation of why such a settlement is appropriate.

2. Settlement Statements. At least three days before the settlement conference, each party shall fax a 1-2 page *ex parte* settlement position statement to chambers at (631)

712-5705. These statements must specify the terms on which the party is willing to settle the case, whether those terms are negotiable, and an explanation of that position. It must have attached to it the party's communicated demand or offer, as prescribed in paragraph II.B.1 above. As these *ex parte* statements will be treated as confidential and will not be docketed, they should include a realistic statement of the party's settlement position.

3. Attendance of Parties Required. Parties with full and complete settlement authority are required to personally attend the conference. An insured party shall appear with a representative of the insurer(s) authorized to negotiate, and who has *full authority to settle the matter*. In the case of a Government or municipal entity requiring the approval of a body, such as a board, legislature or agency, the individual attending the conference must be *fully authorized* to approve and submit a recommendation to that governing body or to contact in real time the person authorized to make such a recommendation.

Having a client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances, which does not include ordinary travel expenses and inconvenience. Because the Court generally sets aside significant time for each conference, it is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement. In that regard, and because the Court and the parties invest significant resources in these conferences, the failure of an authorized representative to appear may result in sanctions.

4. Statements Inadmissible. The Court expects the parties to address each other with courtesy and respect. Parties are encouraged to be frank and open in their discussions. Consistent with the Federal Rules, statements made by any party during the settlement conference are generally inadmissible at trial.¹

D. Mediation Hearing

¹ Of course, though statements made during negotiations are inadmissible at the trial of that matter, litigants and counsel are required to act honestly in their dealings with the Court and each other during this process. *See* 18 U.S.C. ' 1001; ABA Model Rules of Professional Conduct, Rule 41.

Upon joint request of the parties, the Court may conduct a mediation hearing in an effort to resolve the matter. Mediations begin with a joint session with presentations by each side. Counsel, plaintiff, and a representative for defendant with full settlement authority (as defined above) are directed to appear in person. The mediation will consist of a 20 minute presentation of the evidence and arguments by each party; questions from the Court; followed by separate, closed-door caucuses with each side as necessary. Counsel may present any documentary, physical, photographic, or electronic evidence deemed helpful during the presentation, with the limitation that the sum of such evidentiary presentations may not exceed 20 minutes. The Court's familiarity with the applicable legal principles shall be presumed, although counsel is free to allocate time for legal argument as they see fit. Counsel shall submit copies of any documentary, photographic, video, or audio exhibits, Bates stamped, in a binder with a table of contents to the Court no fewer than 3 business days in advance of the mediation. Counsel may also present targeted selections of deposition transcripts, although voluminous records will be excluded. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to discover creative means for resolving the dispute.

III. Motions

A. Pre-motion conferences and oral arguments are not required for motions. Requests for oral argument must be made at the time the motion is submitted for decision.

B. Discovery or Other Non-Dispositive Motions

Litigants shall make discovery or other non-dispositive motions by letter motion, pursuant to Local Civil Rules 37.3, which shall be filed electronically as a AMOTION.@ Such letter motions may not exceed three pages in length, exclusive of attachments. A response not exceeding three pages in length, exclusive of attachments, must be served and filed within five business days of receipt of the letter motion. Replies are not permitted on letter motions. Parties must make a good faith effort, pursuant to Local Civil Rule 26.4 and FRCP 37(a)(1), to resolve disputes, including discussion either by telephone or in person, **before** making a motion. Failure to comply with this requirement, or to include a certification of such efforts consistent with FRCP 37(a)(1), will result in the denial of the motion. Courtesy copies of letter motions need not be supplied.

C. Dispositive Motions

Dispositive motions, such as motions to dismiss and motions for summary judgment, must be made to the presiding district court judge, in conformance with his or her individual rules, unless the parties have consented to Magistrate Judge Brown=s jurisdiction for all purposes in accordance with 28 U.S.C.' 636 (c)(1).

Where the parties have so consented, the following rules apply to dispositive motions:

1. **Schedule:** The parties shall present to the Court a proposed briefing schedule for approval. No revisions to the schedule will be made without the Court=s approval.
2. **Memoranda of Law:** Memoranda of law in support of and in opposition to motions on notice are limited to 20 pages, and reply memoranda are limited to 10 pages. Case citations must contain pinpoint cites. All memoranda of law must use reasonable margins, double spacing, and a reasonable font. Legal arguments must be set forth in a memorandum of law rather than in affidavits, affirmations, or declarations. *See* Local Civil Rule 7.1. Any papers not complying with these requirements will be rejected.
3. **The ABundling@ Rule:** No motion papers may be filed until the motion has been fully briefed. The initial movant is responsible for filing all of the motion and cross-motion papers on the date the reply brief is scheduled to be filed or the return date in the approved briefing schedule, whichever is later.
4. **Courtesy Copies:** After electronic filing, the initial movant shall provide to the Court one hard copy of all motion and cross-motion papers, marked as ACourtesy Copy.@ Courtesy copies of dispositive motions made to the district judge should not be provided to Judge Brown.

IV. Pretrial Procedures

A. Pretrial Orders in Cases to be Tried by District Judges. The parties must submit a proposed joint pretrial order in the format prescribed by the district court judge on or before the

date prescribed in the Scheduling Order.

B. Cases before Magistrate Judge Brown for All Purposes

Joint Pretrial Orders. On the date specified in the scheduling order, the parties shall submit a proposed joint pretrial order that includes the following:

1. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
2. A brief summary by each party of the claims and defenses it has asserted and which remain to be tried, without recital of evidentiary matter, but including citations to all statutes on which the party is relying;
3. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed;
4. Any stipulations or statement of facts that have been agreed to by all parties;
5. A list by each party of the fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify, except for good cause shown;
6. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party; and,
7. A list of exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties who will be offering them. Where possible, the schedule must also include potential impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties must list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, best evidence, chain of custody, and related grounds. Only the exhibits listed will be received in evidence in the party's case in chief except for good cause shown. All exhibits must be pre-marked for the trial, placed in binders with tabs identifying the exhibit, and exchanged with the other parties and delivered to the Court at least ten days before trial.

Filings Prior to Trial. Unless otherwise ordered by the Court, each party shall electronically file the following items fifteen (15) days prior to the commencement date of trial:

1. Proposed, Non-Standard Voir Dire Questions;
2. Requests to Charge, which should be limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the Court. Proposed jury charges must also be submitted on a CD in Word or Wordperfect;
3. Motions *in Limine*: All motions addressing any evidentiary or other issues that should be resolved *in limine*. Any opposition should be filed seven (7) days prior to jury selection. Any reply should be made in the same manner three (3) days prior to jury selection.
4. For non-jury trials, a trial brief/memorandum of law providing a concise overview of the facts to be presented at trial and an analysis of disputed legal issues.

V. Construction.

These individual practice rules shall not curtail or otherwise limit Judge Brown=s discretion over all matters relating to cases over which he presides, or confer any substantive rights upon any party. In addition, these rules shall not be construed to limit the authority of any judicial officer assigned to a particular case.

Appendix A

CONFIDENTIALITY ORDER

It is hereby ordered that the following provisions shall govern claims of confidentiality in these proceedings:

- (a) The following documents and information may be designated as >confidential= provided such documents are not public and have not previously been disclosed by the producing party to anyone except those in its employment or those retained by it [check all that apply]:

___ Sensitive Commercial Data, such as confidential or proprietary research, development, manufacturing, or commercial or business information, trade secrets, special formulas, company security matters, customer lists, financial data, projected sales data, production data, matters relating to mergers and acquisitions, and pricing data.

___ Sensitive Personal Data, such as personal identifiers, financial information, tax records, and employer personnel records.

___ Medical and Legal Records, including medical files and reports.

___ Non-public criminal history.

- (b) If any party believes a document not described in the above paragraph should nevertheless be considered confidential, it may make application to the Court. Such application shall only be granted for good cause shown.
- (c) An attorney for the producing party may designate documents or parts thereof as confidential by stamping the word “confidential” on each page.

If such information is provided in an answer to an interrogatory, the attorney may separately append the information to the main body of the interrogatory responses, mark such appendices ‘confidential,’ and incorporate by reference the appended material into the responses.

At the time of a deposition or within 10 days after receipt of the deposition transcript, a party may designate as confidential specific portions of the transcript which contain confidential matters under the standards set forth in paragraph (a) above. This designation shall be in writing and served upon all counsel. No objection shall be interposed at deposition that an answer would elicit confidential information. Transcripts will be treated as confidential for this 10-day period. Any portions of a transcript designated confidential shall thereafter be treated as confidential in accordance with this order. The confidential portion of the transcript and any exhibits referenced solely therein shall be bound in a separate volume and marked “Confidential Information” by the reporter.

- (d) Documents designated ‘confidential’ shall be shown only to the attorneys, parties, experts, actual or proposed witnesses, court personnel and other persons necessary to review the documents for the prosecution or defense of this lawsuit. Each person who is permitted to see confidential documents shall first be shown a copy of this order and shall further be advised of the obligation to honor the confidential designation. The parties agree that any confidential discovery material produced in this litigation may only be used in connection with this litigation.
- (e) Review of the confidential documents and information by counsel, experts, or consultants for the litigants in

the litigation shall not waive the confidentiality of the documents or objections to production.

- (f) The inadvertent, unintentional, or *in camera* disclosure of a confidential document and information shall not generally be deemed a waiver, in whole or in part, of any party's claims of confidentiality. If at any time prior to trial, a producing party realizes that some portion(s) of the discovery material that the party produced should be designated as 'confidential,' the party may so designate by apprising all parties in writing, and providing that the material has not already been published or otherwise disclosed, such portion(s) shall thereafter be treated as confidential under this order.
- (g) If a party believes that a document designated or sought to be designated confidential by the producing party does not warrant such designation, the party shall first make a good-faith effort to resolve such a dispute with opposing counsel. In the event that such a dispute cannot be resolved by the parties, either party may apply to the Court for a determination as to whether the designation is appropriate. The burden rests on the party seeking confidentiality to demonstrate that such designation is proper.
- (h) If any court filing incorporates confidential material or would reveal its contents, the portions of such filing shall be delivered to the Court in a sealed envelope prominently bearing the caption of this action and the label "Confidential. Filed Under Seal." Counsel shall file under seal those and only those specific documents and that deposition testimony designated confidential, and only those specific portions of briefs, applications, and other filings that contain verbatim confidential data, or that set forth the substance of such confidential information, unless independent good cause is demonstrated.
- (i) Within a reasonable period after the conclusion of the litigation, all confidential material shall be returned to the respective producing parties or destroyed by the recipients.
- (j) In any application to the Court referred to or permitted by this Order, the Court may exercise discretion in determining whether the prevailing party in such a dispute may recover the costs incurred by it and, if so, the amount to be awarded.
- (k) This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder.

Dated:

Counsel for _____

Dated:

Counsel for _____

Dated:

Counsel for _____

Dated:

United States Magistrate Judge